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April 30, 2007

Thomasena Duncan, Esq  
Acting General Counsel  
Federal Election Commission  
999 E Street, N W  
Washington, D C 20463

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2007 APR 30 P 2:03

Re Matter Under Review # 5908  
Peace Through Strength PAC  
Meredith G Kelly, Treasurer

Dear Ms Duncan

We represent the Peace Through Strength Political Action Committee and its Treasurer, Meredith G Kelly, Esq, in the above captioned matter

MUR # 5908 involves a complaint filed with the Federal Election Commission (the "Commission") by a self-styled "public interest" organization located in Washington, D C The complaint alleges a number of statutory violations surrounding the airing of a series of television announcements by the Peace Through Strength PAC (the "PAC") late in 2006 and continuing this year

As you may know, the PAC was organized and filed its FEC Form 1 on July 22, 2002 The PAC is a multi-candidate political committee whose Honorary Chairman is Congressman Duncan Hunter (52<sup>nd</sup> CD -California) The PAC takes its name, "peace through strength," from the historic phrase used by President Ronald Reagan<sup>1</sup> in describing his negotiating strategy with the former Soviet Union The mission of the PAC is to pay homage to President Reagan's strong leadership, both domestically and overseas, by (1) financially supporting those Congressional candidates who espouse President Reagan's views and (2) by bringing to the public's attention the PAC's views on a number of national public policy issues including (a) maintaining a strong national defense, (b) increased enforcement of our national immigration laws, (c) Congressional reassessment of our international trade agreements, (d) energy independence from foreign

<sup>1</sup> "Peace Through Strength" is the doctrine that military strength is a primary component of peace and is the focus of the seal of the State of Texas The doctrine itself was first formalized by the Chinese strategic thinker, Sun Tzu, and remains the central tenant of today's Chinese military establishment In 1978, the Coalition for Peace Through Strength was formed to make the doctrine one of the principles and goals of a new American foreign policy The Coalition listed 257 Members of Congress as supporting its public outreach efforts The principles and goals of the Coalition were formalized in a 1983 Senate Resolution introduced by Senator Paul Laxalt of Nevada The national security policy embodied in the doctrine of "Peace Through Strength" became a fundamental part of the GOP platform as adopted at its 1980 and 1984 national conventions

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sources of oil and natural gas, (e) preservation of religious symbols from judicial interference, and similar public policy issues pending before Congress

**The Complaint** It is alleged that in airing a series of television announcements over recent months, the PAC has somehow violated provisions of the Federal Election Campaign Act found at 11 C.F.R. § 100.72 and 100.131, for the reason that the PAC accepted "excessive" contributions from individual donors ("Count 1"), spent more than \$5000 on behalf of Congressman Hunter's Presidential "testing the waters" committee by airing a series of televised public policy announcements concerning the PAC's policy positions ("Count 2"), exceeded its \$5000 contribution limit to the Hunter exploratory committee by running these televised announcements ("Count 3"), and failed to disclose certain "disbursements" to the Commission ("Count 4")

**Response** As to "Count 1" of the Complaint – this count alleges that Congressman Hunter's Presidential "testing the waters" committee managed to turn the PAC into a subsidiary of the "testing the waters" committee. This allegation is false. The complaint offers no objective proof of a statutory violation. At best this allegation is based upon suppositions and beliefs offered up by the complainant. This count is a glaring example of the false premise or syllogism that if "A" equals "B" and "B" equals "C" then, by definition, "A" and "C" are one and the same.

It is alleged that the PAC engaged in supposedly improper activities in order that the PAC would expend its financial resources in a manner that would advance the interests of the Hunter "testing the waters" committee by making a series of publicly-disclosed "disbursements" to various television stations around the country to purchase air time to broadcast three messages on the following public policy issues (1) the need for a border fence to curtail illegal immigration ("Border Fence"), (2) the growing military power of China ("Submarine"), and (3) our national trade imbalance with China ("Football"). The text of each of these three announcements is attached at Tab 1<sup>2</sup>. As you will note from these texts, nothing therein mentions Congressman Hunter's presidential campaign or his candidacy for the Republican nomination. In fact, the text of the three messages was carefully written to avoid either explicit advocacy of the election of an identified federal candidate or language that could possibly be construed as an "electioneering communication." While it is true that each message features Congressman Hunter as the narrator of the announcement, it is equally clear from the text that the Congressman's message was to alert the viewer to a potential problem facing the country and to provide a means for that viewer to become actively engaged in supporting the PAC's mission by making either a financial contribution to the PAC or by volunteering to further expand the PAC's message. The text of each message was pre-cleared by Counsel to the PAC and extraordinary care was taken by Counsel and the PAC to make sure that the text of the messages could not be construed as intended to advance the Presidential candidacy of Congressman Hunter.

<sup>2</sup> Tab 1 "Scripts for Peace Through Strength Commercials." The three televised messages that are the subject of this Complaint are posted on the PAC's website [www.peacethroughstrengthpac.com/home](http://www.peacethroughstrengthpac.com/home)

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Inarguably, the PAC has a Constitutionally-protected First Amendment right to speak out on public policy issues the PAC believes are at issue in Congress. That right extends not just to written communications by the PAC to its donors or prospective donors, but also would include communications to its supporters and potential supporters made through newspaper advertising, telephone banks, opinion polling, as well as television, radio, and internet messages. In speaking on these policy issues, the PAC took great care, consulting with Counsel prior to the airing of these messages, that no reasonable person could misconstrue the purpose behind the airing of the announcements. These messages had two purposes: to inform the public on the policy positions taken by the PAC and to seek volunteer support and financial assistance to the PAC to enable the PAC to expand its message and reach. Any fair reading of these three messages demonstrates that the text of each message was carefully tailored to achieve these limited objectives.

"Count 1" alleges that it was improper and an "excessive contribution" to the Hunter Exploratory Committee for the PAC to have featured Congressman Hunter in the PAC's messages and to have run them in a number of states that, according to the complaint, have "early" Presidential primary elections in 2008. These assertions are completely without merit. Without providing any credible evidence to support its allegations in this Count, the complainant puts forth allegations that derive from its uncanny ability to "know" the "reasons" the PAC used Congressman Hunter as its spokesman in the messages and the "reasons" the messages were broadcast in the states where they aired. Congressman Hunter as the narrator of the messages. Congressman Hunter is the Honorary Chairman of the PAC and has been its Honorary Chairman since 2002. He is the PAC's public face and its spokesman. In that capacity, he solicits volunteer and financial support for the PAC. The three messages in which he appears and which are the subject of the Complaint are, by any fair evaluation of the text of the messages, appeals for volunteer and financial support for the PAC and the policy positions the PAC has taken in Washington, D.C. The states in which the messages were aired. Since December, 2006, the PAC has aired messages in the following states: South Dakota, Iowa, North Carolina, New Hampshire, Oregon, South Carolina, and Michigan. The complainant, at Count 1, asserts that these states comprise "early primary" states<sup>3</sup> and thus that the messages were obviously only intended to advance Congressman Hunter's Presidential ambitions. The complainant offers no proof for this assertion other than the vague "how else do you explain it" notion. In fact, these states were chosen for the broadcast of the PAC's messages based upon publicly-available media reports from those states outlining the strength of the public's feeling, in those states, on the current debate over immigration, national defense, and trade issues. The PAC intended to have its messages on those three topics reach a sympathetic audience in the expectation that the audience would respond favorably to the PAC's request for volunteer and financial support. The PAC's effort was successful.

<sup>3</sup> Tab 2. In an article entitled "Primary Focus," April 18, 2007, at page 5 of "CongressDailyAM," the National Journal reported that "thirty-eight states and the District of Columbia have scheduled a presidential primary or caucus prior to March 1 [2008] or are considering it." Query: when over three-quarters of the states are planning pre-March 1, 2008 presidential primary or caucus elections, what meaning should be given to the vague term "early primary state?"

As to "Count 2" of the Complaint, it is alleged that the PAC violated the statute by expending more than \$5000 to purchase air time on a number of television stations across the country to broadcast three messages involving a common national security theme. It is alleged that these "expenditures" by the PAC were actually "expenditures" made on behalf of the Hunter Exploratory Committee and thus were improper under 11 C.F.R. § 100.72(b)(1) and 11 C.F.R. § 433(a). The allegation is false and is unsupported by any objective evidence. At best, this allegation is premised on understandings, beliefs, and suppositions put forth by the complainant.

As established in the response to "Count 1," above, the PAC purchased air time on a number of television stations across the country with the single intention of advancing its core public policy agenda to a receptive audience and, in so doing, add volunteers and financial supporters to the PAC's base of support. That is exactly what the messages achieved.<sup>4</sup>

"Count 2" questions the motivation behind the decision to air these three messages and suggests, without offering one single shred of objective evidence, that the motive was to advance the efforts of the Hunter Exploratory Committee. Nothing could be further from the truth. In fact, the decision by the PAC, in December, 2006, to purchase broadcast air time on television stations across the country came as direct reaction to the events in Washington that unfolded in early November of that year. For the first time in twelve years, the majority of the Congress would be controlled by the Democratic Party. As a consequence, the doctrine of "peace through strength" in the formulation of American domestic and defense policy would be greatly threatened. Hence, the decision by the PAC to assume an expanded leadership role in buttressing the doctrine of "peace through strength" was made manifest and obvious. After November, 2006, the PAC's role as defender of the doctrine would, quite obviously, turn on public communications in an effort to impact the expected debate on Capitol Hill. That was the only premise underlying the airing of these three messages.

As indicated above in the response to "Count 1," the text of the three messages that are the subject of this Complaint were pre-cleared by experienced election law counsel. As the immediate past Chair of the American Bar Association's Standing Committee on Election Law, I believe I have a firm understanding of the Commission's regulatory approach to "express advocacy" and "electioneering communications." I reviewed the text of these three messages and made sure that nothing in that text could be misconstrued in light of the Commission's regulatory construct.

As to "Count 3" of the Complaint, it is alleged that the "expenditures" made by the PAC in the preparation and airing of the three messages at issue constitute "in-kind"

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<sup>4</sup> As a direct consequence of airing the three messages that are the subject of this Complaint, the PAC's website was accessed by hundreds of individuals. Those contacts have translated into the following: at least \$10,000.00 in monetary contributions from individuals in the states where the ads were broadcast but who were not contributors to the PAC prior to the appearance of the messages, and over twenty-five new volunteers for the PAC, none of whom had previously contacted the PAC to volunteer.

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contributions by the PAC and were thus "excessive" pursuant to 11 C.F.R. § 100.52(d)(1). This allegation is without merit and is unsupported by any factual evidence offered by the complainant. Once again, as indicated above, the allegation is based, not on evidence, but rather upon a belief or supposition posited by the complainant. The "disbursements made by the PAC for the preparation and airing of the three messages were unconnected to, not coordinated with, and made independently of the Hunter Exploratory Committee and proof to the contrary does not exist and was not proffered by the complainant. The messages were narrowly focused on the public policy positions taken by the PAC and were a call to a potentially receptive audience to support the PAC by volunteering or providing monetary assistance. The three messages were each properly disclaimed as paid for and authorized by the PAC and each message provide information necessary for an interested party to contact the PAC directly through its website. As indicated above, a number of those contacts proved very fruitful to the PAC and thus justified the expenditure of the PAC's resources to create and air the messages.

As to "Count 4" of the Complaint, it is alleged that the PAC violated 11 C.F.R. § 104.3(b) and 104.9(a) by failing to report the identity of its donors who contributed over \$200 and by failing to disclose the "disbursements" made by the PAC to air its messages in several states. Nothing could be farther from the truth. The PAC has properly disclosed the identity of its donors who must be "itemized" on "contribution" reports to the Commission and the PAC has disclosed its "disbursements" for the messages that aired in the states that are at issue in this Complaint. In fact, the complaint proffers not one shred of evidence to support this allegation.

**The Complainant.** Since Citizens for Responsibility and Ethics in Washington ("CREW") spends two full pages of an eight page complaint describing its self to the Commission, they have opened the door to a more fulsome description of their activities and motivations in filing this and other complaints. In reviewing the complaint and this response in light of the Commission's "reason to believe" predicate, the Commission must also judge the bona fides of the complainant.

CREW was organized in 2001 by two Democrat political activist, Norm Eisen and Louis Mayberg. In its 2001 filing with the Internal Revenue Service (IRS Form 990), CREW lists its three founding directors as Louis Mayberg, Mark Penn and Daniel Berger. Mayberg and Berger are very active donors to Democratic Party committees and candidates. Berger is a trial lawyer and is a longtime contributor to Democrat-oriented committees, including the Democracy Alliance. In 2004 he contributed \$100,000 in "soft money" to America Coming Together (ACT), a so-called 527 committee which was dedicated to defeating President Bush. Mayberg is a hedge-fund operator and well known Democrat donor. Penn is a Democratic Party political strategist and pollster and is currently providing polling services to the Presidential campaign of Sen. Hillary Clinton. The Executive Director of CREW is Melanie Sloan. Sloan filed the pending complaint. She was recruited to that position in 2003 by Norm Eisen. Ms. Sloan is a long-time Democratic Congressional staffer. In 1993 she served on the Senate Judiciary Committee under Sen. Joe Biden (D-Delaware) before moving over to the House Judiciary Committee to serve under Congressman John Conyers (D-Michigan) and

Charles Schumer (D – New York) The Deputy Director of CREW is Naomi Seligman Steiner She has worked as a press secretary for various Democrat Members of Congress and was previously the communications director at Media Matters for America, a “media watch-dog group” funded by George Soros, the largest Democrat donor in the 2000-06 election cycle

Initial funding for CREW was obtained from (1) the Open Society Institute (which is funded by George Soros), (2) the Democracy Alliance, (3) the Barbara Streisand Foundation, (4) the ARCA Foundation (which is funded by Smith Bagley, a former National Finance Vice Chair for the Democratic National Committee), and (5) the David Geffin Foundation The Democracy Alliance is a principal component of an effort by Democratic Party activists to counter-balance entities such as Judicial Watch In August, 2005, the Washington Post reported that contributors to the Democracy Alliance were among “at least eighty wealthy liberals [who] have pledged to contribute \$1 million or more apiece to fund a network of think tanks and advocacy groups to compete with the potent conservative infrastructure built up over the past three decades ” Financial support for the Democracy Alliance has been provided by well known Democrat donors such as Fred Baron, Robert Glaser, Jonathan Soros, Norman Lear, Rob Reiner, George Soros, and Bernard Schwartz

CREW has been instrumental in bringing complaints involving the following Republican officer-holders or candidates Congressman Tom Delay, Senator Ted Stevens, Congressman Curt Weldon, Congressman Jerry Lewis, Congressman John Doolittle and Congressman Tom Feeney CREW’s partisan approach to the filing of complaints was best evidence in 2006 when CREW failed to file a complaint with the House Ethics Committee following extensive media coverage of the improper use of Congressional staff by Congressman John Conyers, Melanie Sloan’s former employer at the House Judiciary Committee

As the Commission well knows from its own experience, CREW’s modus operandi centers on the filing of a complaint, against a Republican officeholder or candidate, either with the Commission or with one of the Congressional Ethics Committees In each instance, the filing of the complaint is simultaneously made known to the media through a CREW press-release Such is the case with the present complaint against the PAC The complaint in MUR # 5908 was filed with the Commission on March 14, 2007 and was timed-stamped by the Commission at 10 48 AM that day Thirty minutes later, at 11 18AM, I received the attached press release<sup>5</sup> from CREW, via an e-mail, from a contact in the Congressional Press Gallery at the U S House of Representatives It is clear from this factual predicate that CREW’s principal, and quite possibly, only interest in filing this and other complaints with the Commission is to engender positive press commentary with respect to such filings CREW is a donor-driven organization Its funding comes from groups and individuals who see CREW’s mission as countering the successes of Republican candidates and committees To keep it’s donor base happy with its performance, CREW must continually file new complaints

<sup>5</sup> Tab 3 “CREW Files FEC Complaint Against Presidential Candidate Duncan Hunter’s Leadership PAC” which was dated March 14, 2007 and e-mailed out to the public at 11 18AM

and engender new press coverage. If CREW stops this effort, its future funding will be imperiled. CREW also solicits funding from the public via a sophisticated direct-mail campaign. That direct-mail campaign is founded on the principle that a donor's contribution will result in more complaints being filed. For CREW, its own financial needs have resulted in a circular dilemma or self-fulfilling prophecy. Contributions must be generated to keep the doors open and the staff employed, donors must be informed of CREW's complaint-driven approach to its mission, and complaints must be filed to energize the donor base. This represents, at best, an actual conflict of interest with CREW's civic obligation not to file frivolous complaints and not to abuse the Commission's regulatory processes. This obvious conflict of interest notwithstanding, CREW files complaint after complaint and issues press release after press release.

**Conclusion** In preparing and airing the three messages that are the focus of this Complaint, the PAC exercised its Constitutionally-protected right to engage in political speech how and where it desired. In exercising this right, the PAC consulted, before the fact, with counsel well versed in the Commission's regulatory approach. In airing these messages, the PAC intended simply to engage a receptive public on issues of common concern and seek the public's financial and volunteer assistance so as to be able to advance the interests of the PAC. The airing of the messages had the intended result with respect to the new donors and new volunteers who have come forward to support the PAC in recent weeks.

With respect to "Counts 1-4" of this Complaint, CREW has failed in its effort to provide the Commission with actual proof of wrong-doing or a statutory violation. Failing to come forward with such proof and, in the alternative, relying exclusively on supposition, innuendo, and belief as support for CREW's contentions, the Commission should immediately dismiss this matter and take no further action against the Respondents.

Should you have additional questions, please feel free to contact me at 202-973-5959.

Sincerely,

WILLIAMS & JENSEN, PLLC

  
William B. Canfield  
Counsel to the Respondents

attachments 3

## **SCRIPTS FOR PEACE THROUGH COMMERCIALS**

### **Script for Peace Through Strength - Border Fence**

I'm Duncan Hunter We built this double fence here at the Mexican border in San Diego and reduced the smuggling of hundreds of thousands of people and tons of drugs by more than 90% The fence works and the new law provides for it to be built 700 miles across Arizona, New Mexico and Texas Join with me, Duncan Hunter, in Peace Through Strength Let's make sure that Homeland Security builds the border fence It works and it's the law

### **Script for Peace Through Strength - Submarine**

I'm Congressman Duncan Hunter A few weeks ago when the Song Class Chinese submarine emerged next to one of our aircraft carriers, about 80 miles off Okinawa, it showed the American people what the Chinese were buying with American trade dollars They're cheating on trade, and they're buying ships and planes and missiles with our money, as well as taking millions of jobs Join me at Peace Through Strength for fair trade

### **Script for Peace Through Strength - Football**

I'm Congressman Duncan Hunter Americans start a football game with a clean scoreboard but China starts a game against our businesses with a 74 point advantage They give a 17 percent subsidy to their guys, they penalize our guys 17 percent and devalue their currency by 40 percent That's cheating and China is buying ships and planes and missiles with American trade dollars Join me at Peace Through Strength for fair trade



## POLITICS

## Primary Focus

■ New York is the latest state to move its 2008 presidential primary or caucus ahead to Feb 5, joining eight others. Another 14 states are considering the move, the result of which would be a de facto national primary. Candidates with strong showings in Iowa, New Hampshire and South Carolina will look to Feb 5 as an opportunity to nail down their party's nomination. But, if two or more frontrunners come out of the January contests neck-and-neck, the Feb 5 primaries could take on a far more decisive role.

Montana's would be the biggest move. Its 2004 primary was June 8.

■ Thirty-eight states and the District of Columbia have scheduled a presidential primary or caucus prior to March 3, or are considering it. Here's how that compares to the last two cycles:



■ So far, candidates have focused their campaigns on Iowa and New Hampshire, where contests are planned for Jan. 14 and 22, respectively.

## Iowa Visits

20	Edwards
10	Biden
7	Obama
7	Dodd
4	Clinton
3	Richardson
23	T. Thompson
20	Romney
19	Brownback
10	Huckabee
9	Tancredo
7	McCam
6	Gingrich
5	Gilmore
4	Graham
2	Hagel, Hunter

## New Hampshire Visits

15	Edwards
11	Biden
7	Dodd
7	Richardson
5	Clinton
4	Obama
17	Romney
7	Huckabee, McCam
6	Tancredo
5	Gingrich
4	Brownback, Grullani,
	Hunter
2	Gilmore, Hagel
1	T. Thompson

Sources: National Association of Secretaries of State, FEC, CRS, Democracy in Action/Eric Appleman, news reports. Candidate visits, 11/04-4/17/07.